IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3686/06
Ram Niwas Sharma vs. State & Anr.

29.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Moinuddin for petitioner.
Shri G.S. Gill, AAG for respondents.

Heard learned counsel for the parties.

The petitioner has filed this writ petition with the prayer that the respondents be directed to regularize his possession over the disputed land and issue him patta thereof. Contention of the learned counsel for the petitioner is that petitioner is in possession of the said agriculture land measuring 0.06 hectares of khasra no.1417 (Sewai Chak) of Village Badawas, Tehsil Kotputli,

District Jaipur since 1962. Tehsildar, Kotputli has in his letter dated 20.5.1999 required the Patwari concerned for submitting jamabandi with map of khasra no.1417. The Additional Collector, District Jaipur thereupon sent a letter dated 1.9.2007 to Sub-Divisional Officer, Kota to issue patta of the land but so far no patta has been issued. The Additional Collector also thereafter wrote a letter to District Collector on 3.10.2001 for making allotment of the subject land to the petitioner under Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes), Rules, 1970 (for short-the Rules of 1970). It has been submitted that even the Government has come out with amendment in the Rajasthan Land Revenue (Conversion of

Agricultural Land for Non-Agricultural Purposes in Rural Areas) Amendment Rules, 1999 by notification so as to provide that for regularization of possession over such nature of lands. The respondents are seeking to illegally deny the benefit of regularization to the petitioner citing the reasons that the land falls within the limit of 25 meters from the center of the National Highway whereas in similar circumstances, they have offered to regularize encroachment over the Government land in khasra no.1418. The petitioner has in this connection cited the letter written by Tehsildar, Kotputli to one Ram Niwas on 18.8.2006 whereby he was required either to remove the encroachment or to get the same regularized within 15 days. The

learned counsel for the petitioner also relied on the judgment of this Court in Naseer Khan Vs. State of Raj. & Ors., 2005(3) Volume 30 page 1192 and argued that this Court in the aforesaid case held petitioner entitled for regularization of his possession because the land was not within 50 feet of the Railway Boundary or National Highway. The requirement of 25 meters as thus been wrongly applied to the case of the petitioner.

On the other hand, Shri G.S. Gill, learned Additional Advocate General opposed the writ petition and denied that the petitioner is in possession over the land in dispute since 1962. It was argued that mere unauthorized possession would make character of the petitioner as a

trespasser and by encroachment over the Government land alone, the allotments under the Rules of 1970 cannot be regularized by mere consideration of fact of encroachment. He cited Rule 11 of Rules of 1970 and argued that the persons who are desirous of getting the land regularized are required to make application as per the procedure and Rules before the Advisory Committee and allotments are made on the recommendation of the Advisory Committee in the order of priority which has been fixed in Rule 11, supra. It has been argued that the petitioner being a non-commissioned ex-servicemen falls in sixth category and five other categories are above him in the order of priority. It was submitted that the encroachment of the petitioner

has already been removed in the year 2000. In this connection, he also referred to proceedings of the Tehsildar Kotputli conducted under Section 91 of the Land Revenue Act. The learned Additional Advocate General also cited the letter dated 5.3.2007 written by Tehsildar, Kotputli to SDO, Kotputli in which it was stated that as of now the petitioner was not in possession over any part of khasra no.1417 and even otherwise such possession could not be regularized because the disputed land falls within 25 meters for the center of the national highway. He also cited he letter of SDO, Kotputli dated 27.12.06 which was addressed to District Collector, Jaipur in which it was stated that the disputed land was situated just 40 feet away from

the Kotputli-Bansur Road and therefore as per Rule 2(f) was not capable of being allotted under the Rules of 1970. It was argued that what the petitioner is seeking is that the land should be first allotted to him under the Rules of 1970 and then converted for commercial purpose under the Rules of 1989 thus at the same time he is seeking two benefits which cannot be given. Even otherwise, a rank trespasser is not entitled to any relief in discretionary remedy of writ from this Court.

Having heard the leaned counsel for the parties and perused the material on record, I find that while on the one hand the petitioner is asserting his possession over the disputed land even now and claiming allotment being ex-army

person but on the other hand the Government is disputing this fact and asserts that the encroachment of the petitioner, if at all there was any, has already been removed in the year 2000. This therefore becomes a fact on which the parties are contesting and therefore is a disputed fact. In the scope of writ jurisdiction this Court cannot possibly resolve such a factual dispute. The learned counsel for the petitioner has not been able to show any law that mere trespass / encroachment over a government land can entitle an ex-army person to allotment under the Rules of 1970.

In this view of the matter, whether or not, the disputed land is situated within 25 meters from the center of the road or whether the correct

requirement is to have only 50 feet distance from the center of road as was cited in the case of Naseer Khan, supra need not be gone into. The petitioner on his own admission was merely a trespasser and at the instance of trespasser, no case is made out for direction to the respondents to make the allotment of the land to the petitioner which was encroached upon by him. I therefore do not find any merit in this petition.

The writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-